Supreme Court, U.S.
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No. 05-32

In The Supreme Court of the United States

ABDELHAFID RAHMANI,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTION PRESENTED

Petitioner contends that the trial court erred in denying his motions to suppress statements. Petitioner submits that any inculpatory statements or admissions that he may have made prior to, during or after his detention should have been suppressed. The evidence is inadmissible because it was obtained in violation of Petitioner's Fifth Amendment right against self-incrimination, Sixth Amendment right to counsel, and due process of law. Therefore, the introduction of these statements violated Petitioner's Fifth Amendment right to remain silent and Sixth Amendment right to the assistance of counsel. Additionally, Petitioner submits that after his arrest, prior to being interviewed, he was not advised of his right to speak to consular officials concerning his arrest as guaranteed by Article 36 of the Vienna Convention. Petitioner submits that the treaty confers individual rights.

Petitioner contends that the trial court erred in denying his motion to suppress evidence. Petitioner submits that the evidence is inadmissible because it was obtained in violation of Petitioner's Fourth Amendment right against illegal search and seizure and the good faith exception to the warrant requirement does not apply. As a result, Petitioner has been denied a fair trial by the circuit court, and a full, fair and independent review of the question by the Court of Appeals.

Therefore, the questions presented are:

1. Whether the trial court erred in denying Petitioner's Motion to suppress statements, and if so, did the erroneous introduction of the improper evidence deny Petitioner a fair trial.

2. Whether Article 36 of the Vienna Convention confers individual rights and if so, (a) whether the International Court of Justice's judgment is binding on American courts; and (b) whether Article 36(1)(b) of the Convention creates a judicially enforceable individual right.

3. Whether the trial court erred in denying Petitioner's Motion to suppress evidence, and if so, did the erroneous introduction of the improper evidence deny Petitioner a fair trial.

4. Whether the trial court and the District Court of Appeal denied Petitioner due process of law and equal protection by failing to recognize and apply well established law.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

PAGE(S)

QUESTIONS PRESENTED i

LIST OF PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vi

OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 8

ARGUMENT AND CITATION OF AUTHORITY 8

ISSUE I 8

A. VIOLATIONS UNDER THE UNITED STATES CONSTITUTION 9

B. VIOLATIONS UNDER THE VIENNA CONVENTION 12

ISSUE II 16

CONCLUSION.....19

APPENDIX

TABLE OF AUTHORITIES

PAGE(S)

CASES

Brown v. Illinois,
422 U.S. 590 (1975) 18

Coolidge v. New Hampshire,
403 U.S. 443 (1971) 6, 10

Edwards v. Arizona,
451 U.S. 477 (1981) 12

Edye v. Robertson,
112 U.S. 580 (1884) 15

Foster v. Neilson,
2 Pet. 253, 7 L.Ed. 415 (1829) 15

Illinois v. Gates,
462 U.S. 213 (1983) 17

Johnson v. Zerbst,
304 U.S. 458 (1938) 10

Maine v. Moulton,
474 U.S. 159 (1985) 7, 11

Massiah v. United States,
377 U.S. 201 (1964) 12

Medellin v. Dretke,
125 S. Ct. 2088 (2005) 14, 16

Michigan v. Harvey,
494 U.S. 344 (1990) 12

Miller v. Fenton,
474 U.S. 104 (1985) 7, 10

Minnick v. Mississippi,
498 U.S. 146 (1990) 12

Miranda v. Arizona,
384 U.S. 436 (1966) 10

State v. Smith,
641 So.2d 849 (Fla. 1994) 6

United States v. Cleaveland,
38 F.3d 1092 (9th Cir. 1994) 10

United States v. Henry,
447 U.S. 264 (1980) 11

United States v. Leon,
468 U.S. 897 (1984) 18

Walls v. State,
580 So.2d 131 (Fla. 1991) 7

CONSTITUTIONAL PROVISIONS

U.S. CONST. AMEND. IV ..... i, 3, 16

U.S. CONST. AMEND. V ..... *passim*

U.S. CONST. AMEND VI ..... *passim*

U.S. CONST. AMEND. XIV 4

STATUTE

28 U.S.C. § 1254(1) 2

OTHER AUTHORITIES

F.R.G. v. U.S., 2001 I.C.J. 466 (Judgment of June 27) 15

George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005) 16

L. Henkin, Foreign Affairs and the U.S. Const., (2d ed.1996) 15

Mexico v. United States, 2004 I.C.J. No. 128 (Judgment of Mar. 31) 13

Vienna Convention, Art. 36 ..... *passim*

Vienna Convention, Art. 36(1) 12

Vienna Convention, Art. 36(1)(b) ..... ii, 13, 14, 15

Vienna Convention, Art. 36(1)(c) 13

Vienna Convention, Art. 36(2) 13

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the District Court of Appeal, Fifth District, State of Florida, appears at Appendix "A".

JURISDICTION

The date on which the Florida District Court of Appeal decided the case was March 4, 2005. A copy of the decision appears at Appendix "A". A timely motion for rehearing, certification and request that the court issue a written opinion, was denied by the Florida District Court of Appeal on April 7, 2005. A copy of the order appears at Appendix "B". The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On February 20, 1996, Petitioner was charged by way of Indictment with Count One, murder in the death of Medhat Zamzam; Count Two, murder in the death of Souad Bousserhan; Count Three, armed robbery of Medhat Zamzam; Count Four, armed robbery of Souad Bousserhan;[1] and Count Five, burglary of a dwelling with an assault or battery or with a firearm.

Petitioner filed a Motion to Suppress Statements and Admissions. The motion alleged, *inter alia*, that after Petitioner's arrest but before Miranda, Petitioner was interviewed by the media and by Souad Amed, an employee of the business where Petitioner was arrested, acting under the auspices of law enforcement agents. The trial court denied Petitioner's motion to suppress. Additionally, Petitioner filed a Motion to Suppress Statements Taken in Violation of Article 36 of the Vienna Convention on Consular Relations. The motion alleged that at no time after his arrest was Petitioner advised of his right to speak to consular officials as guaranteed by Article 36 of the Vienna Convention on Consular Relations.[2] The motion sought suppression of all statements obtained by police taken in violation of his consular notification rights as guaranteed by Article 36 of the Vienna Convention on Consular Relations.

Petitioner filed an Omnibus Motion to Suppress Evidence. The motion sought to suppress evidence seized from Petitioner's vehicle before his arrest; evidence seized from Petitioner's apartment, before his arrest; and evidence seized from Petitioner's hotel room in Puerto Rico, after his

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[1]The State eventually declined to prosecute Counts Three and Four.

[2]Petitioner is a Moroccan national.

arrest.[3] The trial court entered an order denying Petitioner's Omnibus Motion to Suppress Evidence and Renewed Motion to Suppress Statements and Admissions.

A jury of twelve and two alternates were chosen. Trial began on June 18, 2003. After a protracted trial, Petitioner was found guilty of Count One, first degree murder of Medhat Zamzam, Count Two, first degree murder of Souad Bosserhan, and Count Five, burglary of a dwelling with a firearm. A judgment of conviction was entered by the trial court on June 20, 2003.

On September 19, 2003, the trial court sentenced Petitioner to natural life as to Count One, natural life as to Count Two, concurrent with the sentence in Count One, and to natural life as to Count Five, concurrent with the sentence in Count One. Petitioner filed a timely notice of appeal.

On appeal, Petitioner argued, *inter alia*: (1) that the trial court erred in denying his motions to suppress statements, and (2) that the trial court erred in denying his motion to suppress evidence.

On March 4, 2005, the District Court of Appeal, Fifth District, affirmed Petitioner's judgment of conviction and sentence. *Rahmani v. State*, 898 So.2d 132 (Fla. 5th DCA 2005). A copy of the order appears at Appendix "A".

On March 18, 2005, Petitioner filed a Motion for Rehearing, Clarification or Certification. On Motion for Rehearing, Petitioner alleged, *inter alia*, that the Court of Appeal overlooked or misapprehended the law and/or the facts in this case in that the Court of Appeal cited *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971); and *State v. Smith*, 641 So.2d 849 (Fla. 1994) to support its position. Petitioner

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[3]The State stipulated that it did not intend to use at trial evidence obtained from Petitioner's apartment or hotel room in Puerto Rico.

argued that the Court of Appeal overlooked the deliberate use of deception and manipulation by the police as a means of evading Petitioner's constitutional right to remain silent and right to counsel, citing *Miller v. Fenton*, 474 U.S. 104, 116 (1985); *Walls v. State*, 580 So.2d 131, 133-34 (Fla. 1991); and *Maine v. Moulton*, 474 U.S. 159, 179 (1985). On April 7, 2005, the Court of Appeal entered an order denying Petitioner's Motion for Rehearing, Clarification or Certification, without written opinion. A copy of the order appears at Appendix "B".

REASONS FOR GRANTING THE WRIT

Petitioner submits that he was denied a fair trial and that the Florida District Court of Appeal has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Additionally, since in this case Petitioner has continuously relied upon his rights conferred under an international treaty which the U.S. Supreme Court has heretofore not directly addressed and which different state and federal courts (and even different panels in the same court) have differed in their interpretation and application of the terms of this treaty, it is imperative for this Court to exercise its unique authority to clarify for all courts the proper application of the terms of this international treaty and ensue the rights of all foreign nationals who are more susceptible to being unfamiliar with the culture, language, laws and judicial proceedings in this country.

ARGUMENT AND CITATION OF AUTHORITY

ISSUE I

Petitioner contends that the trial court erred in denying his motions to suppress statements and that the Florida District Court of Appeal has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petitioner submits that any inculpatory statements or admissions that he may have made prior to, during or after his detention should have been suppressed. The evidence is inadmissible because it was obtained in violation of Petitioner's Fifth Amendment right against self-incrimination, Sixth Amendment right to counsel, and due process of law.

A. VIOLATIONS UNDER THE UNITED STATES CONSTITUTION

Petitioner filed a Motion to Suppress Statements and Admissions. The motion alleged, *inter alia*, that after Petitioner's arrest but before Miranda, Petitioner was interviewed by the media, and by Souad Amed, an employee of the business where Petitioner was arrested, acting under the auspices of law enforcement agents.

Petitioner was placed under arrest, handcuffed and placed in the back seat of a police vehicle. A reporter for Channel 9 News approached the vehicle. Law enforcement officers observed a conversation between the reporter and Petitioner, determined that they wanted a tape recording of that conversation and placed a tape recorder in the vehicle. Law enforcement knew that the reporter was going to interview Petitioner and wanted a copy of the videotape to use against Petitioner at trial. Law enforcement moved their cars and an officer rolled down the window so the reporter could get his body through the window. After the interview with the reporter, Petitioner requested to speak with a Value-Rent-a-Car employee (Souad), who agreed to speak with him. Law enforcement asked the Value-Rent-a-Car employee if she would record the conversation and she agreed. Although Petitioner had been in custody for approximately two hours before the reporter walked up to the vehicle, he was not advised of his right to remain silent or his right to counsel until after he was transported to the county jail, well after the interview.

In making any statements, Petitioner must have voluntarily waived both his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel. In order to use statements made by a defendant, the state must show that the defendant knowingly and voluntarily waived his Fifth Amendment right against self-

incrimination. *Miranda v. Arizona*, 384 U.S. 436, 467-69 (1966). Here, Defendant was not advised of his Fifth and Sixth Amendment rights and clearly did not knowingly and intelligently waive them. *Johnson v. Zerbst*, 304 U.S. 458 (1938).

The facts of this case involve a full scale arrest. When officers handcuffed Petitioner and placed him in the backseat of the police car, he was not free to leave. Petitioner was clearly in custody for purposes of Miranda yet the officers failed to advise him of his right to counsel and against self-incrimination.

The test for determining whether private individuals are agents of the government is whether, in consideration of the circumstances, the individuals acted as instruments of the state. See *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971). To determine whether a private individual acts as an instrument of the state, courts look to (1) whether the government was aware of and acquiesced in the conduct; and (2) whether the individual intended to assist the police or further his own ends. See *United States v. Cleaveland*, 38 F.3d 1092, 1093 (9th Cir. 1994).

The deliberate use of deception and manipulation by the police appears to be incompatible "with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means," *Miller v. Fenton*, 474 U.S. 104, 116 (1985), and raises serious concerns that Petitioner's will was overborne. Here, the conduct in question qualifies as a gross deception. Petitioner was handcuffed in the back seat of a marked patrol unit when a reporter approached the vehicle. The police observed a conversation between the reporter and Petitioner. The police determined that they wanted a tape recording of that conversation and supplied a tape recorder, which was placed in the patrol vehicle. The police even moved their vehicles and rolled down the

window so the reporter could get his body through the window. The police would not have allowed a stranger to walk up to the police vehicle where the suspect in a murder case was being held in custody. The police knew that the reporter was going to interview the suspect and had in mind that they were going to get a copy of the videotape. The police were not opposed to the reporter's actions and wanted the reporter to go ahead with the interview. Additionally, after the reporter's interview, the police asked Ahmed if she would record her conversation with Petitioner and she agreed.

In *Maine v. Moulton*, 474 U.S. 159 (1985), the Court applied the analysis developed in *United States v. Henry*, 447 U.S. 264 (1980), to a situation outside of the jailhouse setting. The Court held that Moulton's right to counsel was violated when the State made a deal with his codefendant in which the codefendant would surreptitiously record Moulton's statements in return for a favorable plea bargain. The State wired the codefendant when he attended an all-day meeting with Moulton, at Moulton's request, to plan their common defense. The Court rejected the argument that Moulton's initiation of the meeting exonerated the State from any wrongdoing. The Court held that "the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." 474 U.S., at 176.

Petitioner's statements should not have been used against him because they were elicited by the State in the absence of his counsel and without his being informed of his Miranda rights. In light of the pronouncement of the Supreme Court of the United States in *Henry*, Petitioner's incriminating statements made to the reporter while in custody should have been suppressed because these statements were made in the absence of counsel, with no

prior waiver of counsel, and were elicited by the State's stratagem deliberately designed to elicit incriminating statements from Petitioner. Therefore, the introduction of these statements violated Petitioner's Sixth Amendment right to the assistance of counsel. See *Massiah v. United States*, 377 U.S. 201 (1964) (to have any effect, the sixth amendment must apply to indirect surreptitious interrogations).

Moreover, the Value-Rent-a-Car employee's interview was an extension of previous unlawful interrogation. Under the circumstance, the interview constituted an unlawful interrogation violating Petitioner's Fifth Amendment rights. See *Minnick v. Mississippi*, 498 U.S. 146 (1990); *Michigan v. Harvey*, 494 U.S. 344 (1990); *Edwards v. Arizona*, 451 U.S. 477 (1981).

B. VIOLATIONS UNDER THE VIENNA CONVENTION

Petitioner contends that law enforcement failed to advise the Moroccan Consulate of his arrest and incarceration and further failed to inform him of his right to have contact with the Moroccan Consulate under the Vienna Convention on Consular Relations. Specifically, Petitioner submits that the Vienna Convention was violated when the arresting authorities failed to inform him that, as a foreign national, he had the right to contact the Moroccan Consulate. The Vienna Convention confers on a Moroccan national the right to consular assistance following his arrest, specifically to arrange for his legal representation. As a treaty approved by the United States Senate and formally ratified by the President, the convention is the supreme law of the land under our Constitution. Moreover, the Convention itself provides that the rights expressed in Article 36(1) "shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso,

however, that the said laws and regulations must enable full effect to be given to the purpose for which the rights accorded under this Article are intended." Vienna Convention, Art. 36(2).

Petitioner submits that after his arrest, prior to being interviewed, he was not advised of his right to speak to consular officials concerning his arrest as guaranteed by Article 36 of the Vienna Convention.

The International Court of Justice delivered its Judgment in Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. No. 128 (Judgment of Mar. 31). In its Judgment, the Court found that by not timely informing 51 Mexican nationals of their rights under Article 36, paragraph 1(b), of the Vienna Convention on Consular Relations, the United States of America breached the obligations incumbent upon it under that subparagraph. Additionally, the Court found that by not notifying the appropriate Mexican consular post without delay of the detention of 49 Mexican nationals and thereby depriving the United Mexican States of the right, in a timely fashion, to render the assistance provided for by the Vienna Convention to the individuals concerned, the United States of America breached the obligations incumbent upon it under Article 36, paragraph 1(b). The Court also found that, in relation to 34 Mexican nationals, the United States of America deprived the United Mexican States of the right, in a timely fashion, to arrange for legal representation of those nationals, and thereby breached the obligations incumbent upon it under Article 36, paragraph 1(c), of the Convention.

Petitioner submits that this Court should address at least two specific issues raised by the Avene Judgment: (1) whether the International Court of Justice's judgment is binding on American courts; and (2) whether Article 36(1)(b) of the Convention creates a judicially enforceable

individual right. See *Medellin v. Dretke*, 125 S.Ct. 2088 (2005) (Justice O'CONNOR, with whom Justice STEVENS, Justice SOUTER, and Justice BREYER join, dissenting).

Article 36 of the Vienna Convention on Consular Relations guarantees open channels of communication between detained foreign nationals and their consulates in signatory countries:

> "[I]f he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph."

Vienna Convention on Consular Relations, Art. 36(1)(b), Apr. 24, 1963, [1970] 21 U.S.T. 77, 101, T.I.A.S. No. 6820.

In Avena, the ICJ determined that the United States had breached its obligation to inform 51 Mexican nationals, all sentenced to death in this country, of their right to consular notification. Here, as in *Medellin*, this case presents questions that will inevitably recur. *Medellin*, at 2096. Here as in *Medellin*, this case presents questions that have the potential to affect every foreign nation/international visitor to this country, as any one of them could be taken into

custody for questioning, detained or imprisoned. This situation will continue to recur indefinitely and begs for this Court's attention.

Petitioner submits that the treaty confers individual rights. See judgment in LaGrand Case (F.R.G. v. U.S.), 2001 I.C.J. 466, 490-491, 497-498 (Judgment of June 27). See also Avena, supra, repeating the construction it had given to Article 36 in LaGrand, the ICJ decided that Medellin and 50 others were entitled to review and reconsideration of their convictions and sentences because the United States, through various individual States, had violated their Vienna Convention rights. Avena, supra, ¶ 153.

Article 36 of the Vienna Convention on Consular Relations is a self-executing treaty. A self-executing treaty is domestic law. It "operates of itself," as "a rule for the Court," "equivalent to an act of the legislature." *Foster v. Neilson*, 2 Pet. 253, 314, 7 L.Ed. 415 (1829). Because the Convention is self-executing, then, its guarantees are susceptible to judicial enforcement just as the provisions of a statute would be. See *Edye v. Robertson*, 112 U.S. 580, 598-599 (1884) ("A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute"); see generally L. Henkin, Foreign Affairs and the United States Constitution 206-209 (2d ed.1996).

Article 36(1)(b) entails three different obligations for signatory host countries. Their competent authorities shall (1) inform the consul of its nationals' detentions, (2) forward communication from a detained national to his consulate, and (3) "inform the person concerned without delay of his rights under this sub-paragraph." 21 U.S.T., at 101. Of

these, the third exclusively concerns the detained individual, and it is the only obligation expressed in the language of rights.

The President of the United States has informed his Attorney General that the United States would discharge its obligations under the Avena judgment "by having State courts give effect to the decision." George W. Bush, Memorandum for the Attorney General (Feb. 28, 2005). It is "this Court's responsibility" to address and resolve any significant legal ICJ-related issues that may arise in the state-court proceedings. *Medellin*, at 2107-08 (GINSBURG, J., concurring).

ISSUE II

Petitioner contends that the trial court erred in denying his motion to suppress evidence and that the Florida District Court of Appeal has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petitioner submits that the evidence is inadmissible because it was obtained in violation of Defendant's Fourth Amendment right against illegal search and seizure.

Petitioner filed an Omnibus Motion to Suppress Evidence. The motion sought to suppress, *inter alia*, evidence seized from Petitioner's vehicle before his arrest. The motion alleged that pursuant to a search warrant, police searched Petitioner's vehicle while it was parked outside 5991 Curry Ford Road, Apartment 220, Orlando, Florida, and seized live shotgun shells and plastic gloves. The motion argued that the search warrant for the vehicle was improperly issued because the affidavit in support of the warrant failed to establish the necessary probable cause that evidence relevant to the offense in question would be discovered in Petitioner's vehicle. The affidavit indicates

that Investigator Jaynes located a witness who observed someone exit a light yellow, four door vehicle with front end damage and a cracked windshield parked on her front lawn, walk directly to the crime scene at approximately 10:00 a.m., only to return to his vehicle and depart the area approximately 10 minutes later. The witness subsequently identified Petitioner as the individual who she saw exit the vehicle and walk to the crime scene. The affidavit did not state the date on which the witness allegedly saw the vehicle or Petitioner. The motion argued that there was not a substantial basis for concluding that there was a fair probability that evidence of the crimes in question would be found in Petitioner's vehicle. Accordingly, the warrant was improperly issued. After reviewing the motion and the search warrant, the trial court found that the affidavit for the search warrant of the defendant's automobile contained sufficient facts that would lead a reasonable person to believe there to be probable cause for the search of the vehicle described in the affidavit, and entered an order denying Petitioner's Omnibus Motion to Suppress Evidence. Although Petitioner raised this issue on direct appeal, the Florida District Court of Appeal failed to address this issue in its affirmance of Petitioner's judgment of conviction.

Probable cause for issuance of a search warrant is determined solely with reference to the facts stated in the warrant and the supporting affidavit. The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Illinois v. Gates*, 462 U.S. 213, 238-239 (1983).

The probable cause statement in the present case is totally devoid of any facts establishing any probability that evidence of crime would be found at the places to be searched. Although a witness observed Petitioner outside the victims' residence on one occasion, there is no indication when she observed Petitioner or that he had committed any crime or evidence of crime at that time. Thus, there was not a substantial basis for a conclusion that probable cause existed to believe that evidence of crime would be found at the place to be searched. Moreover, the good faith exception to the warrant requirement under *United States v. Leon*, 468 U.S. 897 (1984), does not apply. That exception does not apply where an affidavit is "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" Id. at 923, 104 S. Ct. 3405, citing *Brown v. Illinois*, 422 U.S. 590, 610-611 (1975) (Powell, J., concurring in part). In light of the fact that the search warrant application in this case provided no basis whatsoever for concluding that evidence of crime would be found in Petitioner's vehicle, it cannot be said that the officers executing the warrant acted in good faith in doing so. Accordingly, the judgment of conviction and sentence must be reversed and this case remand for a new trial.

CONCLUSION

Petitioner's judgment of conviction and sentence were obtained in violation of the U.S. Constitution and the Vienna Convention. The trial court erred in failing to acknowledge and apply well established law and in its interpretation of the international treaty. The District Court of Appeal, Fifth District, erred in affirming the trial court's orders.

Petitioner submits that the trial court and the District Court of Appeal have so far departed from the application of the law to the undisputed facts in this case that require this Court to exercise its supervisory power; and that the state court has erroneously interpreted and applied the terms of the Vienna Convention as to require this Court to exercise its unique authority to clarify and apply international and federal law.

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/

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TABLE OF CONTENTS

Appendix Page

Appendix A:

Opinion of
The Court of Appeals for the 5th District
entered April 7, 2005..... A-1

Appendix B:

Order of
The Court of Appeals for the 5th District
Re: Denying Appellant's Motion for Rehearing
entered April 7, 2005..... B-1

District Court of Appeal of Florida,
Fifth District,

Abdelhafid RAHMANI, Appellant,

v.

STATE of Florida, Appellee.

No. 5D03-3469.

March 4, 2005.
Rehearing Denied April 7, 2005
[ENTERED: March 4, 2005]

Landon P. Miller, Naples, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Bonnie Jean Parrish, Assistant Attorney General, Daytona Beach, for Appellee.

SHARP, W. J.

After a jury trial, Rahmani, a citizen of Moracco, appeals from a judgment convicting him of two counts of murder and one count of burglary of a dwelling with an assault or battery with a firearm[1] He was sentenced to three concurrent life sentences. We affirm.

[1] Rahmani argues the trial court erred in denying his motion to suppress statements he made to a newspaper reporter, Schouten, and to a private citizen, Ahmed, after he had been arrested and placed In the back of a police vehicle.[2] Jaynes, a Seminole County major crimes

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[1] *See* §§ 782.04(1)(a). 812.13(1). 812.13(2)(a), Fla. Stat. (1996).

investigator, arrived at the scene shortly after Rahmani had been detained by Orange County deputies, in Orange County, pursuant to an arrest warrant issued by the Seminole County Sheriff's Department.

Jaynes testified that Rahmani told him he wanted to tell his story to the reporter, but he needed a French interpreter to properly express himself. Jaynes observed the conversation between the reporter and Rahmani, but could not hear what they said. He testified he had not spoken with the reporter about the conversation with Rahmani before it took place, and he gave the reporter no instructions about interviewing him or any questions to ask. He did request that a tape recorder be placed in the police vehicle, which was done. The reporter also testified he had not spoken with any police officers before interviewing Rahmani.

After his conversation with the reporter, Rahmani indicated he wanted to speak with Jaynes further, but he needed a French interpreter. He asked Jaynes to speak to Ahmed, an employee at Value Rent A Car where the arrest took place. She agreed to speak with Rahmani after Jaynes asked her to, and she told him she would record the conversation with a tape recorder provided by Jaynes.

The trial judge correctly found that Schouten and Ahmed were not acting under the authority of law enforcement and neither attained the status of police agent. Accordingly, the statements were voluntary on Rahmani's

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[2] Rahmani made incriminating statements to the reporter and what amounted to an admission of having committed the murders to the private citizen.

part and no *Miranda*[3] warnings had to have been given to make them admissible in court.[4]

We also find that the affidavit for the search warrant of Rahmani's vehicle contained sufficient facts to establish probable cause to search it. Accordingly, evidence seized pursuant to the search warrant (live shotgun shells and plastic gloves) was admissible in evidence at Rahmani's trial.

[2] As an additional ground to bolster his argument that the statements made to the reporter and Ahmed should have been suppressed, Rahmani contends law enforcement failed to advise the Moroccan Consulate of his arrest and failed to advise him of his right to have contact with the Moroccan Consulate under the Vienna Convention on Consulate Relations. Further, he asserts that after his confinement in jail and pre-trial, police authorities denied his requests to contact the Moroccan Consulate.

Pursuant to Article 36 of the Vienna Convention, law enforcement is required to advise the Consulates of participating nations, including Morocco, of the arrest and incarceration of one of their citizens and to inform the citizen of his or her right to have contact with the Consulate. This is for the purpose of allowing a foreign national's consular office to visit with him or her in custody or detention, to converse and correspond with him or her, and to arrange for legal representation.

Rahmani reasons that after his arrest and prior to being interviewed, he should have been advised of his right

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[3] *Miranda v. Arizona*, 384 U.S. 436. 86 S.Ct. 1602. 16 L.Ed.2d 694 (1966).

[4] *Coolidge v. New Hampshire*, 403 U.S. 443, 487, 91 S.Ct. 2022. 29 L.Ed.2d 564 (1971). *See also State v. Smith*, 641 So.2d 819 (Fla. 1994) (no reasonable expectation of privacy in police vehicle).

to speak to consular officials under the Vienna Convention. He contends that he should have been advised of these rights prior to or in conjunction with being given his *Miranda* rights. Had this been accomplished, he asserts that he would not have spoken with the reporter or Ahmed and thus he was prejudiced.

[3][4] In this context, we reject Rahmani's argument. We do not determine at what point in time a duty arises under the Treaty to inform a foreign national of his right to contact the consulate and vice-versa, except to say it does not arise on the point of arrest and prior to custodial interrogation accompanied by *Miranda* warnings. If voluntary statements are made by an arrested foreign national, immediately after an arrest, compliance with the Treaty is not a relevant consideration in determining whether consensual statements made to private persons are admissible at trial. *See United States v. Ademaj*, 170 F.3d 58 (1st Cir.1999). Further, no prejudice in this regard was established. *See Maharaj v. State*, 778 So.2d 944 (Fla.2001).

AFFIRMED

SAWAYA, C.J., and PLEUS, J., concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

ABDELHAFID RAHMANI

Appellant,

v. CASE NO. 5D03-3469

STATE OF FLORIDA,

Appellee.
_____/

DATE: Apri 7, 2005

[ENTERED: April 7, 2005]

BY ORDER OF THE COURT:

ORDERED that the Appellant's MOTION FOR REHEARING, CLARIFICATION OR CERTIFICATION, filed March 18, 2005, is denied.

/s/
FRANK L. HABERSHAW, CLERK

cc: Office of the Attorney General, Daytona Beach
Landon P. Miller, Esq.